

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

C&D CONTRACTORS, INC.	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 05-820-KAJ
	:	
TONI WILSON, et al.	:	
	:	
Defendants	:	

**RESPONDENT’S MOTION TO DISMISS FOR LACK OF  
SUBJECT MATTER JURISDICTION AND FOR FAILURE  
TO STATE A CLAIM UPON WHICH RELIEF CAN BE  
GRANTED, PURSUANT TO FED.R.CIV.P. 12(b)(1) AND 12(b)(6)**

Respondent, Toni Wilson, hereby moves the Court to Dismiss the Petition for Writ of Mandamus filed by C&D Contractors, Inc (“C&D”), and in support thereof avers as follows:

1. C&D’s claim arises from a government contract between the Department of Veterans Affairs (“VA”) and PBM Construction Group (“PBM”). See Petition for Writ of Mandamus, paragraph 5 (hereinafter “Petition at ¶. \_\_\_”). C&D performed certain work as a subcontractor on that contract. Petition at ¶. 6.

2. Pursuant to the Contract Disputes Act, 41 U.S.C. 601 et seq (“CDA”), claims arising from the performance of a government contract are exclusively within the jurisdiction of the Court of Federal Claims. See *Eagle Fence Co., Inc. v. V. S. Electric, Inc.*, 324 F.Supp. 2d 621, 627 (E.D.Pa. 2004).

3. Because there is no privity of contract between the parties, the Respondent does not owe any legal duty to the Petitioner under the contract. See *Acousti v. United States*,

15 Cl. Ct. 698 (1988). Moreover, the Act Petitioner seeks to compel is discretionary, not ministerial. Thus, there is no basis for a mandamus action under 28 U.S.C. § 1361.

Accordingly, Respondent moves the Court to dismiss the Petition for Writ of Mandamus for lack of subject matter jurisdiction, and also for failure to state a claim upon which relief can be granted.

Respectfully,

COLM F. CONNOLLY  
United States Attorney

By: /s/Patricia C. Hannigan  
Patricia C. Hannigan  
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Dated: January 30, 2006

IT IS SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2006

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HONORABLE KENT A. JORDAN  
District Judge  
United States District Court

**CERTIFICATE OF SERVICE**

I, Patricia C. Hannigan, hereby certify that on **January 30, 2006**, I electronically filed the foregoing **RESPONDENT'S MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION AND FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED, PURSUANT TO FED.R.CIV.P. 12(b)(1) AND (6)** with the Clerk of the Court using CM/ECF which will send notification of such filing to the following:

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